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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,819	05/14/2001	Donald Robert Martin Boys	P652D1	9684

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EXAMINER
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QURESHI, AFSAR M

ART UNIT	PAPER NUMBER
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2616

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/14/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

**Application No.**

09/855,819

**Applicant(s)**BOYS, DONALD ROBERT  
MARTIN**Examiner**

Afsar M. Qureshi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 38-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 38-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This action is responsive to 'Request for Appeal Brief', filed on 11/31/2007.
2. Upon reviewing the application, and the parent application 09/182,950 now (US Patent 6,314,094), Examiner found new grounds of rejection.
3. The finality of the previous Office Action, dated 4/14/2006, has been withdrawn.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 38-43 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

In claim 38, "a web browser application" is software. The claimed invention include judicial exception with abstract idea. Claim is seemingly a patentable process/apparatus, however, it is in reality seeking patent protection of computer program/software in the abstract as evidenced by claim 44 and a web browser embedded in hardware/Internet Radio Device. In the claim, it does not show practical application by physical transformation or practical application that produces useful and tangible result and it is not claimed in combination with functional descriptive material. Computer programs or software claimed as computer listings per se, i.e., the descriptions or expressions of the programs are not physical "things". They are neither computer components nor statutory processes, as they are not "acts" being performed.

In contrast, acclaimed computer readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory.

5. **The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**

6. Claims 38-41, 43-47, 49 are rejected under 35 U.S.C. 102(e) as being anticipated by Mackintosh et al. (US 6,349,329).

Mackintosh et al. discloses a communication system comprising the following features: **regarding claim 38**, a Web browser application for an Internet connectable audio player device (Fig. 5, user terminal 212; column 8, lines 32-64; column 9, line 60 to column 10, line 3), comprising: a mechanism for invoking (Fig. 6; column 9, line 48 to column 10, line 62) a Universal resource Locator URL of an accessible site on the Internet; and functionality for reading embedded code (see col. 11, lines 16-26) in the site to find a link (column 10, lines 4-28) to downloadable audio content; wherein the browser determines a link (column 10, lines 4-28; column 14, lines 3-7) is a link to downloadable audio content by presence of code for initiating an audio player application.

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**regarding claim 39**, wherein the audio player device (Fig. 5, user terminal 212; column 8, lines 32-64; column 9, line 60 to column 10, line3) is an Internet radio;

**regarding claim 40**, wherein the audio player device (Fig. 5, user terminal 212; column 8, lines 32-64; column 9, line 60 to column 10, line3) is a personal computer;

**regarding claim 41**, wherein, after determining a link (column 10, lines 4-28; column 14, lines 3-7) is a link to downloadable audio content, the Web browser application invokes the link and downloads an audio stream provided at the destination of the link to the audio player device (Fig. 5, user terminal 212; column 8, lines 32-64; column 9, line 60 to column 10, line3);

**regarding claim 43**, wherein the link to downloadable audio content is a live (column 6, lines 38-42) broadcast radio audio stream offered over the Internet;

**regarding claim 44**, a method for finding and invoking (Fig. 6; column 9, line 48 to column 10, line 62) live (column 6, lines 38-42) audio data streams associated with links on a Web site, comprising steps of (a) invoking (Fig. 6; column 9, line 48 to column 10, line 62) a Universal resource Locator URL of an accessible site on the Internet from an Internet connectable audio player device (Fig. 5, user terminal 212; column 8, lines 32-64; column 9, line 60 to column 10, line3); (b) upon accessing the accessible site, reading embedded code in the site to find a link (column 10, lines 4-28) to downloadable audio content; and (c) determining a link (column 10, lines 4-28; column 14, lines 3-7) is a link to downloadable audio content by presence of code for initiating an audio player application;

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**regarding claim 45**, wherein the audio player device (Fig. 5, user terminal 212; column 8, lines 32-64; column 9, line 60 to column 10, line3) is an Internet radio;

**regarding claim 46**, wherein the audio player device (Fig. 5, user terminal 212; column 8, lines 32-64; column 9, line 60 to column 10, line3) is a personal computer;

**regarding claim 47**, wherein, after step (c) determining a link (column 10, lines 4-28; column 14, lines 3-7) is a link to downloadable audio content, performing a step (d) invoking (Fig. 6; column 9, line 48 to column 10, line 62) the link and downloading an audio stream provided at the destination of the link to the audio player device (Fig. 5, user terminal 212; column 8, lines 32-64; column 9, line 60 to column 10, line3);

regarding claim 49, wherein the link to downloadable audio content is a live (column 6, lines 38-42) broadcast radio audio stream offered over the Internet. See column 1-25.

7. Claims 42 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mackintosh et al. (US 6,349,329) in view of Lowell (US 6,012,086).

Mackintosh et al. discloses the claimed limitations above. Mackintosh et al. does not disclose the following features: regarding claim 42, wherein the Web site comprises more than one link to downloadable audio content, and the browser invokes a first link and downloads audio content from the first link for a preprogrammed time period, then continues reading the embedded code for a second link, and if a second link is found accesses the second link and downloads audio content from the second link for the

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preprogrammed time period; regarding claim 48, wherein the Web site comprises more than one link to downloadable audio content, and the browser invokes a first link and downloads audio content from the first link for a preprogrammed time period, then continues reading the embedded code for a second link, and if a second link is found accesses the second link and downloads audio content from the second link for the preprogrammed time period.

Lowell discloses a system comprising the following features: **regarding claim 42**, wherein the Web site comprises more than one link to downloadable audio content, and the browser invokes a first link (EVENT 1, SOURCE URL) and downloads audio content from the first link (EVENT 1, SOURCE URL) for a preprogrammed time period (Fig. 5, START TIME, STOP TIME), then continues reading the embedded code for a second link (EVENT 2, SOURCE URL), and if a second link (EVENT 2, SOURCE URL) is found accesses the second link (EVENT 2, SOURCE URL) and downloads audio content from the second link (EVENT 2, SOURCE URL) for the preprogrammed time period (Fig. 5, START TIME, STOP TIME); **regarding claim 48**, wherein the Web site comprises more than one link to downloadable audio content, and the browser invokes a first link (EVENT 1, SOURCE URL) and downloads audio content from the first link (EVENT 1, SOURCE URL) for a preprogrammed time period (Fig. 5, START TIME, STOP TIME), then continues reading the embedded code for a second link (EVENT 2, SOURCE URL), and if a second link (EVENT 2, SOURCE URL) is found accesses the second link (EVENT 2, SOURCE URL) and downloads audio content from the second link (EVENT 2, SOURCE URL) for the preprogrammed time period

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(Fig. 5, START TIME, STOP TIME). See column 6, lines 20 to column 9, line 18. It would have been obvious to one of the ordinary skill in the art at the time of the invention to modify the system Mackintosh et al., by using the features, as taught by Lowell, in order to provide an efficient system by eliminating the need for a user to manually access the event and initiate the recording process. See Lowell, column 1, lines 52-55.

### ***Response to Arguments***

8. Applicant's arguments filed 11/13/2006 have been fully considered but they are not persuasive.

The arguments in reference to "embedded code" and "wherein the browser determines....." have already been addressed in Final rejection, dated 4/14/2006 and subsequently in Advisory, dated 8/28/2006. Additionally, applicant's own admission of prior art whereby hyper-links are activated for a live-streaming audio and video of real-time broadcasts and *the like* (Specification page 2, lines 14-20) reads on claimed embedded code

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Afsar M. Qureshi whose telephone number is (571) 272 3178. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Field Lynn can be reached on (571) 272 2092. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



**AFSAR QURESHI**  
**PRIMARY EXAMINER**  
2/7/2007